



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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September 20, 2017

Via ECF

Honorable Benita Y. Pearson
United States District Court Judge
United States District Court, Northern District of Ohio, Eastern Division
313 Thomas D. Lambros Federal Building and Courthouse
125 Market Street
Youngstown, OH 44503

Re: Binstock v. DHSC, LLC d/b/a Affinity Medical Center
Case No. 5:16-CV-01060

Dear Judge Pearson:

This letter is to apprise the Court of Respondent's failure to properly comply with the Memorandum of Opinion and Order (Order, ECF No. 60) dated September 5, 2017, granting the Petitioner's Petition for Injunction under Section 10(j) of the National Labor Relations Act.

Section (g) of the Order directed Respondent "to hold a meeting or meetings at Respondent's facility, **scheduled to ensure the widest possible audience**, at which a responsible management official shall read, or at Respondent's option, a Board Agent shall read in the presence of a responsible management official." (emphasis added)

To date, Respondent has failed to schedule readings of the Order to ensure the widest possible audience of bargaining unit employees. The bargaining unit of registered nurses (RNs) represented by the Union has approximately 270 employees. The majority of these employees work either a day shift from 7:00 am to 7:30 pm, or a night shift from 7:00 pm to 7:30 am. The RNs have shift reports between 7:00 am and 7:30 am, and between 7:00 pm and 7:30 pm. Due to the morning routines and inability to obtain adequate coverage, a majority of employees have been unavailable to attend the scheduled readings agreed upon by Respondent to take place at 6:30 am or noon.

Petitioner contacted Respondent's counsel to discuss additional dates for meetings at times to accommodate those employees who have been unable to attend the ordered readings. Respondent's counsel has refused to hold additional meetings.

On Friday, September 15, 2017, the undersigned counsel read the Court's Order at the scheduled times at Respondent's facility. *Out of approximately 270 employees in the bargaining unit, only three employees attended the 6:30 am reading, and only one employee attended the noon reading.*

Petitioner submits that additional readings of the Court's Order at 6:30 pm and 7:45 pm on a mutually agreed upon date are necessary to ensure the widest possible attendance as mandated by the Court. Petitioner submits that scheduling a reading at 6:30 pm will permit night shift employees to attend the reading with sufficient time to report to their scheduled shifts starting at 7:00 pm. Likewise, an additional reading at 7:45 pm will provide for an optimum time for day shift nurses to hear the reading, upon completion of their shift at 7:30 pm.

Notably in 2014, pursuant to another District Court Order obtained against the Respondent, these proposed times successfully provided the widest possible attendance during the reading of that Court Order. *See Calatrello v. DHSC, LLC d/b/a Affinity Medical Center*, 5:13-cv-01538, 2014 WL 296634 (N.D. Ohio Jan. 24, 2014) (Adams, J.) (order granting injunctive relief).. Respondent, at that time, agreed to hold 6:30 am and noon readings and evening readings at 6:30 pm and 7:45 pm on February 3, 2014 for its unit employees, times which it acknowledged were selected to ensure the widest possible attendance. (*See*, Exh. A, email dated January 30, 2014 from Respondent's counsel confirming reading times; Affidavit of Compliance, para. 5) At least 50 employees attended each reading held on February 3, 2014.

Petitioner respectfully requests the Court to order Respondent to schedule additional readings of the Order at 6:30 pm and 7:45 pm, on a mutually agreeable date to ensure full compliance with the Court's Order.

Additionally, the Petitioner learned that Respondent communicated with its employees by email about the Court's Order and the initial meeting dates and times for the reading of the Court's Order. The email states, in relevant part, "[t]he Court's Order relates to certain unfair labor practice charges filed against the Hospital by the National Nurses Organizing Committee (Union) beginning in 2015. The Order does not decide whether the union's unfair labor practice charges are meritorious – **Rather, the Order requires that the Hospital maintain the status quo while the union's unfair labor practice charges are pending before the NLRB.**" Exhibit B (emphasis added.)

The Respondent's reference to the "status quo" is misleading and fails to communicate to employees that the "status quo" to be maintained is the "status quo" before Respondent engaged in the alleged unfair labor practices. Without that further description, the statement suggests that the "status quo" is the current situation at the Hospital **after** the Respondent's conduct alleged to violate the NLRA. Respondent is required, upon request of the Union, to restore the *status quo ante* by rescinding certain unilateral changes, provide previously requested information, bargain in good faith with the Union in accordance with a schedule, and otherwise bargain over discharged employees. To suggest otherwise by failing to fully communicate to employees what Respondent's obligations are pursuant to the Court's Order is misleading and an egregious misrepresentation to the employees.

In the same email communication as the Petitioner's request for additional times for reading of the Court's Order, Petitioner's counsel requested that Respondent send a new email to employees revising and correcting its misleading communication (Exh. C). Respondent's

counsel refused to make any revisions to its communications to its employees about the reading of the Court's Order (Exh. D). Petitioner's counsel respectfully requests this Court order Respondent to send additional communications to employees fully explaining its obligations pursuant to the Court's Order, with a clear and unequivocal explanation of what the "status quo" means with respect to the Court's Order.

Accordingly, Petitioner respectfully requests that the Court order Respondent to permit an agent of the Board to engage in additional readings of the Court's Order at a mutually agreed upon date, at 6:30 pm and 7:45 pm to ensure the widest possible audience in compliance with the Court's Order. Furthermore, the Petitioner respectfully requests that the Court order Respondent to send an email communication to employees correcting its misrepresentation.

Thank you for your consideration of these requests.

Respectfully Submitted,

/s/ Aaron B. Sukert (consent)

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CASE NO. 5:16-CV-1060

- 4 -

September 20, 2017

CERTIFICATE OF SERVICE

I certify that on September 20, 2017 a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

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